

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:
All Cases

MDL NO. 2804

Civ. No. 1:17-md-02804-DAP

HON. JUDGE DAN A. POLSTER

**AMERISOURCEBERGEN DRUG CORPORATION’S MOTION FOR
LEAVE TO FILE A SUR-REPLY IN FURTHER OPPOSITION TO
PLAINTIFFS’ MOTION TO COMPEL AND FOR SANCTIONS**

AmerisourceBergen Drug Corporation (“ABDC”) hereby seeks leave to file a short, 7-page sur-reply in opposition to Plaintiffs’ Motion to Compel Defendant AmerisourceBergen to Produce Discovery Improperly Withheld and to Show Cause Why It Should Not Be Sanctioned For Its Discovery Misconduct (ECF No. 3300). The sur-reply that ABDC seeks leave to file is attached hereto as Exhibit A.

There is good reason to permit the sur-reply. Plaintiffs’ Reply in support of their Motion (ECF No. 3332) adds new allegations in support of their sanctions request and attaches an additional 100 documents they claim should have been produced in Track One—ten times the number of documents attached to the opening Motion. ABDC should be permitted to respond to Plaintiffs’ new contentions, especially in the context of a motion for sanctions filed against it.

Courts routinely grant leave for non-movants to file a sur-reply, particularly where—as here—the movant has raised issues for the first time in a reply brief. *See, e.g., Eldridge v. Cardif Life Ins. Co.*, 266 F.R.D. 173, 175 (N.D. Ohio 2010) (“This Court grants leave to file a sur-reply to afford a party an opportunity to address new issues raised for the first time in the reply.”);

Ferguson v. Lorillard Tobacco Co., Inc., 475 F. Supp. 2d 725, 728 n.4 (N.D. Ohio 2007) (same);
Elliott Co. v. Liberty Mut. Ins. Co., 239 F.R.D. 479, 480 n.1 (N.D. Ohio 2006) (same).¹

Dated: June 15, 2020

Respectfully submitted,

/s/ Robert A. Nicholas

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¹ This Court has consistently allowed parties' to file sur-replies in such circumstances. *See* Order [non document] granting Endo's Motion for leave to File Instanter Sur-Reply (Feb. 4, 2019); Order granting Plaintiffs' Motion for Leave to File Sur-Reply (Aug. 21, 2019) (ECF No. 2499); Order [non document] granting Pharmacies' Motion for leave to file a surreply (Nov. 15, 2019).

CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2020, AmerisourceBergen Drug Corporation's Motion for Leave to File a Sur-Reply in Further Opposition to Plaintiffs' Motion to Compel and for Sanctions was served on all counsel of record via the CM/ECF system.

/s/ Robert A. Nicholas

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